

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JERMAINE COLLINS,

Plaintiff,

vs.

KEITH KENNEDY,

Defendant.

3:13-cv-00103-MMD-WGC

**REPORT & RECOMMENDATION  
OF U.S. MAGISTRATE JUDGE**

This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. After a thorough review of the record, the court recommends that this action be dismissed with prejudice based on plaintiff's failure to obey the court's orders, failure to update the court with his current address, and failure to prosecute this action.

**I. Procedural History**

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff was a state prisoner when he filed this action. On April 11, 2013, the undersigned entered a screening order in this case, in which the court determined that plaintiff's due process claim against one defendant may proceed, but the remainder of the claims were dismissed with leave to amend. (ECF No. 4). The court granted plaintiff thirty days in which to file an amended complaint, curing the

1 deficiencies outlined in the court's screening order. (ECF No. 4, at p. 10). The undersigned entered  
2 another screening order on July 9, 2013, in which the court noted that plaintiff did not file an  
3 amended complaint or respond to the court's order in any way. (ECF No. 7). As such, the order  
4 specified that only plaintiff's due process claim against defendant Kennedy would proceed, but not  
5 the remaining claims. (*Id.*, at p. 2). The case was stayed for ninety days to allow plaintiff and  
6 defendant an opportunity to settle their dispute. (*Id.*). Pursuant to the court's scheduling order of  
7 August 21, 2013, a mediation conference was scheduled for September 17, 2013. (ECF No. 9).

8 On September 5, 2013, defendant filed a motion to vacate the mediation conference  
9 scheduled for September 17, 2013. (ECF No. 10). Defendant's motion informed the court that  
10 plaintiff is no longer incarcerated and that plaintiff failed to update the court with his current address.  
11 (*Id.*). Therefore, on September 11, 2013, the court entered a minute order requiring plaintiff to notify  
12 the court of his current address, not later than September 13, 2013. (ECF No. 11). Plaintiff did not  
13 respond to the court's order. Plaintiff also did not oppose defendant's motion to vacate the  
14 mediation conference. On September 16, 2013, the court entered a minute order granting  
15 defendant's motion to vacate the mediation conference. (ECF No. 13). Also on September 16,  
16 2013, a separate minute order was entered, which scheduled a status conference for September 25,  
17 2013, at 1:30 p.m. before the undersigned Magistrate Judge. Counsel for defendant appeared at the  
18 September 25, 2013 hearing, but plaintiff did not appear. Plaintiff has not responded to the court's  
19 orders in any manner. The court notes that the minute orders filed on August 21, 2013, September  
20 11, 2013, and September 16, 2013, were returned to the court as undeliverable because plaintiff has  
21 been discharged from prison. (ECF Nos. 15, 16, & 17).

## 22 **II. Discussion**

23 The Clerk of Court mailed the court's minute order filed August 21, 2013 (ECF No. 9), the  
24 minute order filed August 11, 2013 (ECF No. 11), and the two minute orders filed September 16,  
25 2013 (ECF Nos. 13 & 14), to plaintiff at his address of record, at Ely State Prison. All four of the  
26 minute orders were returned as undeliverable – markings on the envelopes containing the minute

1 orders indicate the following: “Not at ESP; Discharged.” (ECF Nos. 15, 16, & 17). Plaintiff has  
2 been released from prison and has not notified the court of his new address.

3 Rule LSR 2-2 of the Local Rules of Special Proceedings and Appeals provides:

4 The plaintiff shall immediately file with the court written notification  
5 of any change of address. The notification must include proof of  
6 service upon each opposing party or the party’s attorney. Failure to  
comply with this rule may result in dismissal of the action with  
prejudice.

7 In view of plaintiff’s failure to keep the Court informed of his address as required by LSR 2-2, the  
8 court recommends dismissal of this action with prejudice.

9 Additionally, the undersigned recommends dismissal of this action with prejudice based on  
10 plaintiff’s failure to obey this court’s order of September 11, 2013, specifically directing plaintiff to  
11 update his address not later than September 13, 2013. (ECF No. 11). The court further recommends  
12 dismissal of this action based on plaintiff’s failure to prosecute this action.

13 District courts have the inherent power to control their dockets and “in the exercise of that  
14 power, they may impose sanctions including, where appropriate . . . dismissal of a case.” *Thompson*  
15 *v. Housing Auth.*, 782 F.2d 829, 831 (9<sup>th</sup> Cir. 1986). A court may dismiss an action, with prejudice,  
16 based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply  
17 with local rules. *See, e.g. Pagtalunan v. Galaza*, 291 P.3d 639, 643 (9<sup>th</sup> Cir. 2002) (dismissal of  
18 habeas corpus petition with prejudice for failure to prosecute action and failure to comply with a  
19 court order); *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9<sup>th</sup> Cir. 1995) (dismissal for noncompliance with  
20 local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9<sup>th</sup> Cir. 1992) (dismissal for failure to  
21 comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41  
22 (9<sup>th</sup> Cir. 1988) (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court  
23 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9<sup>th</sup> Cir. 1987) (dismissal for  
24 failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9<sup>th</sup> Cir. 1986)  
25 (dismissal for failure to lack of prosecution and failure to comply with local rules).

26 In determining whether to dismiss an action for lack of prosecution, failure to obey a court

1 order, or failure to comply with local rules, the court must consider several factors: (1) the public's  
2 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk  
3 of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and  
4 (5) the availability of less drastic alternatives. *Pagtalunan*, 291 F.3d at 642; *Thompson*, 782 F.2d at  
5 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61;  
6 *Ghazali*, 46 F.3d at 53.

7 This action has been pending since March 4, 2013. The court finds that the first two factors,  
8 the public's interest in expeditiously resolving this litigation and the court's interest in managing the  
9 docket, weigh in favor of dismissal. The third factor, risk of prejudice to defendants, also weighs in  
10 favor of dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in  
11 filing a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d  
12 522, 524 (9<sup>th</sup> Cir. 1976). The fourth factor – public policy favoring disposition of cases on their  
13 merits – is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court's  
14 warning to a party that his failure to obey the court's order will result in dismissal satisfies the  
15 "consideration of alternatives" requirement. *Pagtalunan*, 291 F.3d at 643; *Ferdik v. Bonzelet*, 963  
16 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. Although the court's minute  
17 orders did not include an express warning that dismissal could result from plaintiff's noncompliance,  
18 the fact that plaintiff failed to comply with more than one order leads this court to recommend  
19 dismissal of this action with prejudice. Moreover, no less drastic alternative than dismissal is  
20 feasible, in light of plaintiff's failure to notify the court of his current address. If plaintiff does not  
21 receive this court's orders based on his failure to inform the court of his current address, he is unable  
22 to comply with such orders and he is unable to prosecute this action.

### 23 **III. Conclusion**

24 Based on the foregoing and for good cause appearing, the court recommends that this action  
25 be dismissed with prejudice for plaintiff's failure to update his address with the court, failure to obey  
26 the court's orders, and failure to prosecute this action.

1 **IV. Recommendation**

2 **IT IS THEREFORE RECOMMENDED** that this action be **DISMISSED WITH**  
3 **PREJUDICE.**

4 The parties are advised:

5 1. Pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of Practice, the  
6 parties may file specific written objections to this Report and Recommendation within fourteen days of  
7 receipt. These objections should be entitled "Objections to Magistrate Judge's Report and  
8 Recommendation" and should be accompanied by points and authorities for consideration by the District  
9 Court.

10 2. This Report and Recommendation is not an appealable order and any notice of appeal  
11 pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District Court's judgment.

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13 **DATED this 25th day of September, 2013.**

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17 WILLIAM G. COBB  
18 UNITED STATES MAGISTRATE JUDGE  
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